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EX PARTE OR LATE FILED

September 8, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20054

Re: CC Dkt. No. 96-98, re Availability of UNEs

Dear Ms. Salas:

Enclosed is a copy of a written ex parte contact with Jake Jennings, Special Advisor, Policy & Program Planning Division, regarding the above-referenced docket.

If you need any further information or have any questions, please do not hesitate to give me a call.

Sincerely,

Albert H. Kramer

AHK/rw
cc: Mr. Jake E. Jennings

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September 8, 1999

VIA COURIER

Jake E. Jennings, Special Advisor
Federal Communications Commission
Common Carrier Bureau
Policy & Program Planning Division
445 12th Street, SW
Washington, DC 20054

WRITTEN EX PARTE PRESENTATION

Dear Jake:

Thank you very much for taking the time to meet with us. This letter follows up the meeting by providing additional information on some issues that were discussed.

It is particularly important that unbundled switching remains available as an unbundled network element ("UNE") as part of the "UNE-P." As we explained in our meeting and as the materials we presented demonstrate, Birch enters a market on a "regional" basis to serve small business and residential users. The "UNE-P" must be broadly available if competitive entry to serve these market segments is to be viable. For these reasons, we do not believe any restriction on the availability of UNE-P is warranted.

At the same time, we understand that the Commission is considering restrictions on the availability of UNE-P. If there is to be any restriction on the availability of UNE-P, the geographic areas within which the use of UNE-P can be restricted must be strictly limited. Any such restriction must be strictly confined to the areas where usage is so densely concentrated that facilities-based entry is clearly economically viable. This means that any limitations on the use of UNE-P must be limited to the most concentrated and core areas of the very largest markets.

Birch also continues to be concerned that attempts to limit the availability of the unbundled switching element to switch interfaces "at or below the DS-1 (or T-1) level" will lead to confusion and further litigation. Where digital loop carrier systems ("DLCs") are employed by the incumbent local exchange carrier ("ILEC") to provide voice grade channels (for example, at the DS0 level) from an end user's premises to a central office switch, the voice grade channels will be "muxed up" by the carrier system for transport to the central office switch. The interface at the switch port will generally be at least at the DS-1 or T-1 level. But if the ILEC is not required to provide a switch port interface "at"

the DS-1 level, the voice grade circuits ordered by the CLEC will not be able to be linked to the unbundled local switching without "hairpinning" or some other form of diversion of the voice grade channel to other facilities that would require additional cross-connects or facilities (with all the attendant potential for degradation of service or service failure(s)).

Thus, if the ILECs are only required to provide unbundled switching at less than the T-1 (or DS-1) level, the Commission must be clear that T-1 (or DS-1) or less means that service is at less than the T-1 (or DS-1) level as it leaves the customer premises. Any grade of service limitation on the scope of the ILEC's obligation to provide unbundled switching must still allow the voice-grade channel to be directly connected to unbundled switching. The limitation must not be construed as applying to voice grade circuits that are groomed together by the ILEC for transport to the central office switch (over a carrier system) such that an interface at the switch is required, by the CLEC who ordered the voice grade channels, at the T-1 (or DS-1 or greater) level to allow the unbundled switching functionality to be combined with the DS0 (or other voice grade) level circuit.

We also discussed that UNE-P is a transitional strategy necessary to enter the mass market until CLEC switch integration with ILEC networks is at a more refined level. You requested some data that demonstrated the extent and scope of service affecting problems related to interconnection with the ILEC network. Unfortunately, the shortness of time between your request and the close of the record in this proceeding has precluded the gathering of extensive data. However, we believe the data that we are presenting here is typical of our experience with ILEC service.

We are presenting three sets of data. Set forth below is a breakdown of the 104 trouble tickets generated for Birch's switch-based 1,600 lines in service for June, 1999.

- 13.4% of all switch-based trouble was found to be a SWBT multiplexer problem.
- 18.3% of the trouble tickets were found to be SWBT Central Office problems (SWBT did not share the exact nature of the problems).
- 11% of the trouble tickets were found to associated with SWBT outside plant cable problems.
- 20% of the trouble tickets were returned by SWBT to Birch as "no problem found"; however, in most if not all cases, the problem "went away" after SWBT worked the ticket.

Thus, we believe ILEC facilities or service to be the source of about 63% of Birch's trouble reports for its switch-based customers for June, 1999.[1] While we have not been able to gather the exact time it took to clear the trouble reports, complaints such as noise or static, modems not able to transmit, as well as actual loss of dial tone, in many cases take 24 hours or longer to repair. Often the instances are egregious. On June 25th, new service was installed for a customer. The lines had noise and static and sometimes an echo. The problem took until July 20th and more than seven trips by SWBT to repair. And these problems are continuing. On August 20th, SWBT was doing central office grooming work and took down two DS-1s belonging to the same customer. SWBT took over three hours during the business day (11:30 am to 2:30 pm) to repair the problem. When the DS-1s did come up, one remained with problems that continue to the present day.

The data for July and August is more comprehensive and is separately enclosed. It contains the total number of switch-based lines in service, the number of trouble tickets broken down to show the number of trouble reports by category, and it also does show mean time to repair. The data reveals that for July there were 176 trouble reports on 2,000 lines in service (9.73%). For August, there were 266 trouble reports on 2,356 lines in service. Mean time to repair averaged about 127 hours and 80.2 hours, respectively. While there is no break out yet of the number of trouble reports attributed to the failure of SWBT facilities or services, we have every reason to believe, based on prior experience, that the June experience, attributing 63% of the trouble reports to SWBT's network, in fact applies to July and August as well.

What the combined data show is that the trouble rate and service levels for switch-based services are at unacceptable levels for competitors to be viable. While SWBT would perhaps dispute whether it is SWBT or Bell's network to which particular troubles are attributed, there is a real sense in which that debate is irrelevant. The point is that there is not enough experience and know-how for CLECs and LECs to successfully integrate CLEC switch-based – or it is now called, "smart-build" – strategies with ILEC facilities at service levels and with repair times that make viable a market entry strategy that relies solely on switch-based service. In this environment, UNE-P becomes a vital vehicle for rapidly bringing the benefits of competition to the small business and residential customer that Birch serves, as well as a vital transitional bridge to additional facilities-based competition.

We should also mention that these data and instances reflect only "in-service" problems. The data for missed installations[2] or rolling out service on an overall basis,[3] or

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[1] This does not include problems associated with switch translations, for which data was not separately gathered in June.

[2] For example, SWBT provides a Firm Order Commitment ("FOC") for all orders and has until 5:00 PM of the FOC date to complete their work. In some instances the

cut overs, about which the Commission has been regaled with information, reinforces the point that UNE-P is a necessary transitional step to a fuller, more robust facilities-based competition.

Thank you for your consideration.

Sincerely,

David Scott
Gregory Lawhon

work is not completed until the day after the FOC. In other cases SWBT does the work a day or two before the FOC. In other words SWBT gets "close" to the date.

[3] For example, while Birch had NXXs active in the LERG database by December 15th, 1998 it took a number of phone calls and finally Birch employees going throughout the Kansas City Metro area making test calls to get SWBT to properly load Birch NXXs into their switches. As recently as last month, a customer identified a location in the metro area that still could not call to a Birch number because the NXX was not loaded into the data base at a particular central office.

BIRCH TELECOM TROUBLE HISTORY

DATE RANGE			TROUBLE GROUP KEY
AUGUST 1 – AUGUST 31, 1999			CBC = Can't Be Called
			CCLD = Can't Call Long Distance
LINES INSTALLED AS OF 8/1/99		TROUBLE vs. TOTAL LINES	CCO = Can't Call Out
			FEATURE = Feature Not Working
FACILITIES	2356	11.29%	NDT-S = No Dial Tone – Single Line
RESALE	61809	2.34%	NDT-M = No Dial Tone – Multiple Lines
UNE-P	3842	12.68%	NOISE = Noise
TOTAL LINES	68007	3.23%	OTHER = Other

SERVICE CLASS	FACILITIES TICKETS	FACILITIES PERCENTAGE
BUSINESS	266	100.00%
RESIDENTIAL	0	0.00%
TOTAL	266	100.00%

TROUBLE GROUP	FACILITIES TICKETS
CBC	29
CCLD	13
CCO	22
FEATURE	28
NDT-S	31
NDT-M	50
NOISE	38
OTHER	55
TOTAL	266
PERCENTAGE	12.10%

TROUBLE GROUP	FACILITIES PERCENTAGE	FACILITIES AVG MTTR*
CBC	10.90%	86:08:31
CCLD	4.89%	128:53:23
CCO	8.27%	53:58:46
FEATURE	10.53%	100:36:58
NDT-S	11.65%	60:42:56
NDT-M	18.80%	60:09:54
NOISE	14.29%	82:03:39
OTHER	20.68%	69:13:05
TOTAL	100.00%	80:13:24

* MTTR = Mean Time To Repair

BIRCH TELECOM TROUBLE HISTORY

DATE RANGE			TROUBLE GROUP KEY
JULY 1 – JULY 31, 1999			CBC = Can't Be Called
			CCLD = Can't Call Long Distance
LINES INSTALLED AS OF 7/1/99		TROUBLE vs. TOTAL LINES	CCO = Can't Call Out
			FEATURE = Feature Not Working
FACILITIES	2000	8.80%	NDT-S = No Dial Tone – Single Line
RESALE	58897	2.32%	NDT-M = No Dial Tone – Multiple Lines
UNE-P	2100	12.62%	NOISE = Noise
TOTAL LINES	62997	2.87%	OTHER = Other

SERVICE CLASS	FACILITIES TICKETS	FACILITIES PERCENTAGE
BUSINESS	176	100.00%
RESIDENTIAL	0	0.00%
TOTAL	176	100.00%

TROUBLE GROUP	FACILITIES TICKETS
CBC	26
CCLD	19
CCO	20
FEATURE	9
NDT-S	28
NDT-M	12
NOISE	32
OTHER	30
TOTAL	176
PERCENTAGE	9.73%

TROUBLE GROUP	FACILITIES PERCENTAGE	FACILITIES AVG MTTR*
CBC	14.77%	202:39:44
CCLD	10.80%	72:59:00
CCO	11.36%	145:22:27
FEATURE	5.11%	101:03:33
NDT-S	15.91%	100:08:41
NDT-M	6.82%	118:51:20
NOISE	18.18%	138:34:53
OTHER	17.05%	135:31:24
TOTAL	100.00%	126:53:53

* MTTR = Mean Time To Repair